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(3) The Secretary laid on the table copies of the following Government Orders :—

(*a*) G.O. No. 815,[a] Development, dated 3rd May 1928, recording the audit report and accounts on the Cinchona department, Madras, for the year ending 31st March 1927.

(*b*) G.O. No. 846,[a] Development, dated 7th May 1928, passing orders on the audit report and accounts of the Russellkonda Saw Mill for the quarter ending 30th September 1927.

IV

ADJOURNMENT MOTION *IN RE* THE SEIZURE OF SUBRAHMANYA BHARATHI'S SONGS BY THE POLICE.

* Mr. S. SATYAMURTI :—" Sir, I ask for leave to move the adjournment of the business of the House for the purpose of discussing a definite matter of urgent public importance, to wit, the recent action of the City Police in entering upon and searching the premises of the Hindi Prachar Sabha on the High Road, Triplicane, for copies of Subrahmanya Bharathi's songs and seizing nearly two thousand copies of the same."

* The hon. the PRESIDENT :—" I understand that there is an application in the High Court and whether this motion will not be barred by the principle of *sub judice* is a matter for consideration."

* Mr. S. SATYAMURTI :—" May I make my submission, Sir ? Sir, this is an order made under the new section of the Criminal Procedure Code, No. 99-A, which authorizes any Local Government to declare every copy or issue of a book or newspaper containing such matter to be forfeited to His Majesty. Then, Sir, 99-B says, any person having any interest, in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99-A, may within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper or the book or other document in respect of which the order was made did not contain any seditious or other matter of such a nature as is referred to in sub-section (1) of section 99-A.' Then, Sir, there is another section to which I would invite your attention, section 99-G. No order passed or action taken under section 99-A shall be called in question in any court, otherwise than in accordance with the provisions of section 99-B. Therefore this order is appealable to the High Court only under the restriction contained in 99-G. That is to say no action taken in connexion therewith is appealable. These are the copies of the application which has now been filed in the High Court and that application prays the High Court to revise the order of forfeiture, i.e., the order passed by the Burma Government under section 99-A. So far as this order is concerned under which these copies are seized, and which I seek your leave and the leave of the House to bring forward before this House by means of this adjournment motion, it is passed by the Chief Presidency Magistrate here and on a warrant issued by him in pursuance of the republication of the order of the Burma Government in the issue of the *Fort St. George Gazette*, dated the 11th September 1928. I further want to submit to you that once that order is passed there it is not compulsory on the part of the Madras Government

a Printed separately.

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to seize all these copies. The section you will notice, Sir, confers an optional jurisdiction as it were. It is a case where any police officer can seize the same and any magistrate may by warrant authorize, etc., to search and seize copies. The small narrow point which I seek to bring before the House for discussion and expression of opinion is the policy of the Government of Madras in having given effect to this order of forfeiture of the Burma Government by means of this Magistrate issuing this order and by means of the police seizing these copies. This has nothing to do with the order of forfeiture which alone is appealable to the High Court. If action in pursuance of this order in section 99-G cannot be brought before the High Court, I submit this particular matter is not before the High Court and therefore not *sub judice*. It may be open to argument that the Madras High Court has no jurisdiction at all, because, this is an order of the Burma Government. It is not relevant for the present purpose to discuss that. I am confining myself to the order of the Madras Government or rather its servants both magisterial and police in having taken action."

* The hon. the PRESIDENT :—" So the hon. Member will confine himself to the action of the police ? "

* Mr. S. SATYAMURTI :—" Yes."

* The hon. the PRESIDENT :—" Or of the policy of the Government ? "

* Mr. S. SATYAMURTI :—" Except in this implied way that the police are supposed to have acted under the orders of the Government. I have not the Police Commissioner in this Council. I can only deal with my hon. Friend here."

* The hon. the PRESIDENT :—" The hon. Member can deal with the Home Member regarding the conduct of the police."

* Mr. S. SATYAMURTI :—" The question here is not the policy of the Government but the giving effect to a forfeiture order of the Burma Government."

* The hon. the PRESIDENT :—" I do not think the hon. Member can discuss both."

* Mr. S. SATYAMURTI :—" Except in an implied way I do not want to discuss the larger question, but I wish to take the decision of the House on this order which I say is not before the High Court."

* The hon the PRESIDENT :—" Then the question whether those songs contain seditious matter, etc., will form the subject matter."

* Mr. S. SATYAMURTI :—" Otherwise there is no point in this discussion."

* The hon. the PRESIDENT :—" The moment the hon. Member travels into the realm of the seditious nature of Bharathi's songs he would be trespassing on the subject matter of the petition before the High Court and I cannot allow a discussion on that aspect of the question because the High Court has to settle whether the subject matter of the songs is seditious or not."

* Mr. S. SATYAMURTI :—" The question whether those songs are seditious or not is relevant for that purpose. No doubt the order of the Burma Government can be justified only on the ground that those passages or songs contained seditious matter. It is also relevant for the purpose as to why the

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police in Madras seized these songs. I take it that it will not be put forward on behalf of the Madras Government that they seized them merely because the Burma Government passed this order. My answer is this Government are not bound by the orders of the Burma Government. It is not the order of the Government of India. If, on the other hand, Government, having the option, now choose to exercise that option, I submit it must be for certain reasons. My line of argument will depend upon the position Government take. If the Government say they did it without applying their mind merely because another Local Government did it, then I respectfully agree with you that the question of the seditious nature of the songs is not relevant. If, on the other hand, Government take the line that the Government also felt that these songs deserve to be treated in the manner in which they have treated them, I submit that the Government are not justified in ordering the seizure of the copies on the ground that they contained seditious matter. I may have to convince the House by my argument that they had no seditious matter for that purpose and that purpose only."

12 noon. * The hon. the PRESIDENT :—" I am afraid the hon. Member has not understood my difficulty. That matter may be relevant for the discussion. But how can I allow a motion which raises that question, namely, whether the songs are seditious or not? Because, that is the matter before the High Court."

* Mr. S. SATYAMURTI :—" On that matter, Sir, our rules and standing orders are only clear to this extent, namely, that a resolution could not deal with a matter which is *sub judice*."

* The hon. the PRESIDENT :—" The High Court will have to decide whether the songs are seditious or not."

* Mr. S. SATYAMURTI :—" For the purpose of deciding whether the order of forfeiture of the Burma Government is legal or not. But, Sir, there is another aspect which is not before the High Court, that is to say, the action of the Madras Government."

* The hon. the PRESIDENT :—" What is the action of the Madras Government?"

* Mr. S. SATYAMURTI : —" The action of the Madras Government in seizing the songs, not in passing the order."

* The hon. the PRESIDENT :—" The thing is this : the question may be discussed from various standpoints. But if the hon. Member proposes to go into the question whether the songs are seditious or not, I am afraid I cannot allow it."

* Mr. S. SATYAMURTI :—" May I make one submission, Sir ? "

* The hon. the PRESIDENT :—" That question has to be decided by the High Court."

* Mr. S. SATYAMURTI :—" The rules contemplate only that a resolution should not deal with a matter which is before a court of law or which is *sub judice*. The matter before the High Court is the order of forfeiture of the Burma Government. There is no rule—I speak subject to correction—which says that in the course of the discussion you ought not to raise matters which are *sub judice*, while on a discussion on a matter which is not *sub jduice*

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There is nothing in our rules or standing orders which prevents a reference to matters which may be *sub judice* in the course of that discussion."

The hon. the PRESIDENT :—" Section 99-B is clear, I think. The words are ' apply to the High Court to set aside such order on the ground that . . . the book . . . in respect of which the order was made, did not contain any seditious or other matter.' So, I take it that the only issue before the High Court is whether the books contain seditious matter. I do not think under rule 23 (1) (iii) that matter can be discussed. If the hon. Member proposes to discuss the motion without referring to the question whether the songs do contain seditious matter or not, he may be in order."

* Mr. S. SATYAMURTI :—" On that matter, Sir, I really want to make only one more submission, that with regard to the prohibition contained in our rules and standing orders about subject matters which may form the subject matter of resolutions, you will notice that . . . ."

* The hon. the PRESIDENT :—" Any matter which is under adjudication by a Court of Law."

* Mr. S. SATYAMURTI :—" Yes, Sir. The rule says ' no resolution shall be moved in regard to any of the following subjects, namely. . . . any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.' Therefore, I cannot move any motion before this House in respect of a matter which is now before the High Court, the matter being the order of the Burma Government forfeiting copies of Bharathi's songs to His Majesty. No doubt, the argument on section 99-B, to which you now referred, will have to confine itself to the question whether these songs contain or do not contain seditious matter."

* The hon. the PRESIDENT :—" My point is this : section 99-B declares that the only question which may be raised before the High Court is whether the songs are seditious or not. Now, I understand that matter is before the High Court. Therefore, the hon. Member cannot discuss that matter under rule 23 (1) (iii), because the spirit of the rule is that once the High Court has got jurisdiction to dispose of a matter, the Council shall not pronounce its opinion on the matter."

* Mr. S. SATYAMURTI :—" I will base my argument on this ground ; even assuming that the songs are seditious, they are not so seditious as to require action on the part of the Government of Madras in forfeiting them."

* The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" It seems to me, if I may say so respectfully, that the position which, we understand, you were referring to, is quite correct. Now, under section 99-B, the only question which the High Court will have to consider is whether these songs are seditious or not. In fact the High Court is precluded from considering any other question. So, that is the whole question under adjudication. And what is it that this motion seeks to discuss except the same question, namely, whether the songs are seditious or not ? "

* The hon. the PRESIDENT :—" He may draw the attention of the Council to the action of the Police without going into the merits of the seditious nature of the songs."

* The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" But, is it possible to discuss the action of the Police without referring to it ? Police action was taken because the songs are seditious. I assume for the moment that the

songs are seditious, for the purpose of the present discussion. The Police seized them only on that ground. If the songs are not seditious, if the order is not correct, it would be a different matter. The Police performed their duty on the sole ground, namely, on the order of the Burma Government that the songs are seditious. That is the sole question for adjudication before the High Court. I cannot understand how we can discuss this adjournment motion without going into the question whether the songs are seditious or not. It seems to me, Sir, subject to your ruling, that the point is quite clear, namely, that the point for adjudication by the High Court is the question that we shall have to discuss here, and it is not a matter which can be discussed in the face of Standing Order 12 and rule 23 (1)."

Mr. SAMI VENKATACHALAM CHETTI :—" We are at present concerned not with the seditious or non-seditious nature of those songs. As a matter of fact, what we are now concerned with is the action of the Local Government either in permitting themselves to be dictated by the other Local Government or in permitting their Police officers to take any action in pursuance of an order issued by another Government, i.e , whether they are authorized to do so or whether they are compelled to do so. It is for this Government to justify their action by saying that they are bound down by law. Therefore, that matter will come out in defence. We are not going to discuss a matter which is *sub judice*, i.e., whether the subject matter is seditious or not. We are solely concerned with the action of the Local Government in asking the Police to take action because another Local Government has ordered them to do so."

* Rao Bahadur C. V. ANANTAKRISHNA AYYAR :—" Mr. President, Sir, the question strikes me in this manner. Just as you have a decree of a court which in execution could not be challenged, here we have similarly an order passed by the Rangoon Government. Under section 99, there is this provision made that when once an order of forfeiture has been made by a Local Government, the Police may seize such condemned copies wherever they are found in British India provided they get an order from the Magistrate. It is a duty imposed upon the police wherever copies might be found, whichever might be the Local Government that have originally passed the order. Section 99 makes it clear . . ."

Mr. ABDUL HAMID KHAN :—" On a point of order, Sir. The hon. Member is going into the merits of the question."

* The hon. the PRESIDENT :—" The Advocate-General will go on."

* Rao Bahadur C. V. ANANTAKRISHNA AYYAR :—" Section 99 is specific, that when once an order of forfeiture has been passed by a Local Government, the duty of the Police is to seize such copies wherever found in British India, having applied to a magistrate and having obtained a warrant. Here a warrant has been obtained by the Police. Now, section 99 makes it absolutely clear, that from such an order there is the right to move the High Court, and the only point that would be considered by the High Court in such a matter is whether as a matter of fact the condemned publication contains seditious matter. And section 99 (*g*) makes it also clear that no other point could be raised when impugning order passed under that particular section If the question sought to be discussed here is whether these songs contain seditious matter I submit rules 12 and 23 make it absolutely

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clear that no matter which is under adjudication by a Court of Law could be discussed, and the only matter under section 99 which could be brought before the court is whether the condemned publication does, as a matter of fact, contain seditious matter. So that, reading section 99 and its sub-clauses together with Legislative Council Rules 12 and 23, it seems to me that any question which raises a discussion whether any particular condemned publication does or does not as a matter of fact contain seditious matter would offend the rule of *sub judice*."

* Mr. S. SATYAMURTI :—" In view of what has fallen from your lips, Sir, I may say that my purpose in raising this motion is merely to question the action of the Police. In discussing the matter, I will not refer to the question as to whether those songs are seditious or not. I will assume they are seditious, and yet question the policy of the Government whether they are justified in not using their discretion in the matter and whether they are not wrong in acting in pursuance of an order of another Government."

* The hon. the PRESIDENT :—" In view of the undertaking by the hon. Member, Mr. Satyamurti, that he would not refer to the matter whether the songs are seditious or not, I think the Council will be in order to discuss the conduct of the Police in using their discretion. So far as that aspect of the question is concerned, I think the motion is in order. Does the Government object ? "

* The hon. Diwan Bahadur M. KRISHNAN NAYAR : —" Where is the urgency, Sir ? "

* Mr. S. SATYAMURTI :—" On a point of order. You have ruled, Sir, that the motion is in order. The hon. Member is out of order in raising the question of urgency now."

* The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" You have given a ruling on this point, namely, whether in this discussion . . ."

* Mr. S. SATYAMURTI :—" On a point of order. You have already ruled that the motion is in order."

* The hon. Diwan Bahadur M KRISHNAN NAYAR :—" On the question whether it is urgent or not . . ." (Cries of ' No, no ', ' Too late ', and ' Order), order '.

* The hon. the PRESIDENT :—" Hon. Members will allow the hon. the Law Member to continue his speech." 12-15 p.m.

* The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" The only point on which you gave us a ruling was whether the matter that is to be considered by the High Court is identical with the matter that this Council has to consider. The other point that I now raise is whether there is any urgency with reference to this motion. The action has been taken ; the Police have seized copies . . ."

* The hon. the PRESIDENT :—" To-morrow they may seize some other books in some other places ; I don't think they have exhausted all the books."

* The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" I believe they have exhausted all these books. (Voices : ' No, no '.) I speak with reference to the particular books that are mentioned to have been in particular premises . . ."

* The hon. the PRESIDENT :—" The hon. Member's library may contain it or my library may contain it ?"

* The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" But the notification does not refer to other places ; the notification refers to a particular place in Triplicane. The Bharathi Asram at Triplicane is the only place mentioned in the notification, and the police are not authorized to seize these books from any other premises."

* The hon. the PRESIDENT :—" The songs are composed and published by Subrahmanya Bharathi ; the published books may be in some of the libraries."

* The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" Does the notification refer to it ?"

* The hon. the PRESIDENT :—" It is stated 'all copies wherever found'. Wherever they are found they are to be confiscated.

" Does any Member object ? (After a pause.) Since there is no objection, I wish to know whether the Government would like to proceed with it to-morrow. (After a pause.) It will be taken up to-morrow after 2-30 p.m."

V

DEMANDS FOR SUPPLEMENTARY GRANTS FOR 1928-29.

GRANT XIX—EDUCATION—TRANSFERRED.

* The hon. Dr. P. SUBBARAYAN :—" Mr. President, on the recommendation of His Excellency the Governor, I move

> '*that the Government be granted a further sum not exceeding Rs. 4,000 under Grant XIX—Education—Transferred,*'

for the purpose of publishing a book on Birds of South India. Sir, as has been shown in the explanatory memorandum placed before the hon. Members, there are no books now dealing with birds in South India. (A voice : question.) I do not know whether the hon. Members of this House are interested in birds (Voices : No.). If any hon. Member has devoted his attention to the study of birds, he would understand why this motion is being made. That is one of the recreations which hon. Members of this House can undertake with profit. (Voices : Oh !) The songs of birds have a great attraction for those who are tired of work ; and they can amuse themselves early in the mornings if they really know something about the way in which these birds live. I may mention a case in point. I do not know whether hon. Members are aware that one of the greatest Foreign Secretaries of State in England, Lord Grey of Falloden, has as his amusement birds. His recent book on Birds is well worth perusal by hon. Members, if they really want to know how this recreation can be carried on. As I have said, Mr. President, this sum of Rs. 4,000 is worth paying. Besides, as is shown in the explanatory memorandum the Government stand to get a profit out of this publication ; because even though there may not be many persons interested in Birds, I know there are enough people in this province who will buy this book when it is published. I hope hon. Members will see their way to grant this amount."